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No. 99-830

Supreme Court, U.S.
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CLERK

In The

Supreme Court of the United States

DON STENBERG, et al.,

Petitioners,

v.

LEROY CARHART, M.D.,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Eighth Circuit

REPLY TO BRIEF IN OPPOSITION

DON STENBERG
Attorney General

L. STEVEN GRASZ
Deputy Attorney General
Counsel of Record
2115 State Capitol
Lincoln, NE 68509-8920
Tel: (402) 471-2686

Counsel for Petitioners

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OR CALL COLLECT (402) 342-2831

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REPLY TO RESPONDENT'S BRIEF IN OPPOSITION

I. The Respondent Acknowledges There Is A Conflict Between The Decisions of the Seventh and Eighth Circuits Which Should Be Resolved By This Court

The Respondent candidly acknowledges that "The State correctly points out that the . . . decision of the court below is in conflict with a . . . decision of the Seventh Circuit, namely *Hope Clinic v. Ryan* . . . . " (Respondent's Brief In Opposition at 7). *See also id.* at 16 ("The conflict between the decision of the Eighth Circuit below and that of the Seventh Circuit should be resolved. . . . "). Thus, it is clear that "a United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter." Supreme Court Rule 10(a). The Court should grant certiorari in this case to resolve this conflict.

II. The Court Should Grant Certiorari to Uphold The Fundamental Rule of Statutory Construction Favoring Constitutional Interpretations of State Legislative Enactments

In what may well constitute the ultimate legal irony, the Respondent argues strenuously that this Court should refuse to adopt a saving construction of Nebraska's partial birth abortion statute, as was done by the Seventh Circuit, but rather should strictly adhere to what the Respondent asserts is the statutes' "plain language". (Respondent's Brief in Opposition at 16-19). Thus, while advocating a strict construction of statutes furthering the States' legitimate interests in partially-born children, the

Respondent simultaneously relies on penumbral emanations as the source of his constitutional right to literally tear the arms and legs off of living, unanesthetized, mid and late-term, human children (Supp.App. 11-13), and/or pull them from the womb, puncture their skulls and suction out their brains (Supp.App. 17). *See* Respondent's Brief in Opposition at 16 (advocating a "judicially-restrained approach to statutory construction" and opposing adoption of a saving construction). *See also id.* at 18 (asserting that adoption of a saving construction of the statute would result in "usurping the authority of state legislatures" and would "substitute the judicial for the legislative department.").

Notwithstanding the new-found fervor of the Respondent for strict judicial construction, fundamental considerations of federalism and rules of statutory construction favor a saving construction of the statute. As this Court has stated, "every reasonable construction must be resorted to, in order to *save* a *statute* from unconstitutionality." *Rust v. Sullivan*, 500 U.S. 173, 190, 111 S.Ct. 1759, 1771 (1991) (quoting *Edward J. DeBartolo Corp. v. Florida Gulf Coast Building & Construction Trades Council*, 485 U.S. 568 (1988)). *See also Webster v. Reproductive Health Services*, 492 U.S. 490, 109 S.Ct. 3040 (1989) (reversing Eighth Circuit decision declaring a Missouri abortion statute unconstitutional and adopting a saving construction of the statute). The Court should grant certiorari in this case to uphold the fundamental rule of statutory construction favoring constitutional interpretation of State legislative enactments.

III. The Respondent's Arguments on the Merits Require Full Briefing, and the Court Should Grant Certiorari on Each Issue Presented

The Respondent devotes a significant portion of his Brief in Opposition to discussing the merits of the case in an attempt to persuade the Court to "summarily affirm" the lower court. The Respondent's arguments, however, contain a number of mischaracterizations of the evidence, testimony, arguments below, and even portions of the relevant law. The important issues raised in this case require full and thorough briefing for proper disposition by the Court. The Court should grant certiorari on each issue presented and require full briefing.

CONCLUSION

It shocks the conscience that in the United States of America a human child can be literally pulled from the womb and then cruelly killed by having his or her skull punctured and brains suctioned out. The State of Nebraska has a legitimate interest in banning this barbarous procedure, and the Petitioners respectfully request

the Court to grant a writ of certiorari on each of the questions presented in the Petition for Writ of Certiorari.

Respectfully submitted,

DON STENBERG
Attorney General of Nebraska

L. STEVEN GRASZ
Deputy Attorney General
Counsel of Record
2115 State Capitol
Lincoln, NE 68509-8920
(402) 471-2682

Counsel for Petitioners